

Assembly Bill No. 163

Passed the Assembly April 3, 1997

Chief Clerk of the Assembly

Passed the Senate June 2, 1997

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1997, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to add Section 939.71 to the Penal Code, relating to grand juries.

LEGISLATIVE COUNSEL'S DIGEST

AB 163, Baugh. Grand juries: exculpatory evidence.

Under existing law, the grand jury is not required to hear evidence for the defendant, but is required to weigh all the evidence submitted to it. When it has reason to believe that other evidence within its reach will explain away the charge, the grand jury is required to order that evidence to be produced, and for that purpose may require the district attorney to issue process for witnesses.

This bill would require the prosecutor, if he or she is aware of exculpatory evidence, to inform the grand jury of the nature and existence of this evidence and of the duties of the grand jury as specified above. The bill would provide that if a failure to comply with this provision results in substantial prejudice, that failure shall be grounds for dismissal of the portion of the indictment related to that evidence.

The people of the State of California do enact as follows:

SECTION 1. Section 939.71 is added to the Penal Code, to read:

939.71. (a) If the prosecutor is aware of exculpatory evidence, the prosecutor shall inform the grand jury of its nature and existence. Once the prosecutor has informed the grand jury of exculpatory evidence pursuant to this section, the prosecutor shall inform the grand jury of its duties under Section 939.7. If a failure to comply with the provisions of this section results in substantial prejudice, it shall be grounds for dismissal of the portion of the indictment related to that evidence.

(b) It is the intent of the Legislature by enacting this section to codify the holding in *Johnson v. Superior Court*,



15 Cal. 3d 248, and to affirm the duties of the grand jury pursuant to Section 939.7.



Approved _____, 1997

Governor

